

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**Baldobino, Hannah, and
Kelly, Victoria
Plaintiffs,
V.
KANDR RESTAURANT GROUP, INC.
D/B/A Chick-Fil-A/Walnut Avenue FSU,
And Chick-Fil-A INC.
Defendant(s).**

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CIVIL ACTION NO. 5:20-cv-1462

JURY REQUESTED

PLAINTIFF'S ORIGINAL COMPLAINT

MAY IT PLEASE THE COURT::

Hannah Baldobino (“Ms. Baldobino”), and Victoria Kelly (“Ms. Kelly”) (Collectively “Plaintiffs”), complain of and about KandR Restaurant Group Inc D/B/A Chick-FilA/Walnut Avenue FSU (“KandR”) and Chick-Fil-A INC. (Collectively “Defendants”), alleging and stating claims or relief as follows:

NATURE OF ACTION JURISDICTION AND VENUE

1. This is an action under *Title VII of the Civil Rights Act of 1964, 42 U.S.C 200e et seq, as amended*, to correct unlawful employment practices on the basis of gender, sexual orientation, and retaliation.
2. Venue is prescribed pursuant to 28 U.S.C. §1391 and properly lies in the San Antonio Division of the Western District of Texas. Plaintiff invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. §1337 because Plaintiff's claims under the laws of the United States that they form part of the same case or controversy under Article III of the United States Constitution. Additionally, this county a

county that both Defendants, KandR and Chick-Fil-A operate out of and have a large business presence in.

4. The Court has jurisdiction over this case in that the amount in controversy exceeds the minimum jurisdictional limits of this Court.

PARTIES

5. Plaintiff, Hannah Bandalbino , is an individual who resides in Comal County, New Braunfels, Texas.

6. Plaintiff, Victoria Kelly, is an individual who resides in Comal County, New Braunfels, Texas.

7. Defendant, KandR is a Domestic For-Profit Corporation organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the registered agent of the corporation, J.M. Trippon CPA, at 8955 Katy Freeway Suite 310 Houston, TX 77024.

8. Defendant, Chick-Fil-A Inc is a Foreign For-Profit Corporation and may be served with process by serving the registered agent of the corporation, CT Corporation System 199 Bryan St. Ste. 900 Dallas Texas 75201-3136

CONDITIONS PRECEDENT

9. All conditions precedent to the institution of this lawsuit have been fulfilled.

FACTUAL BACKGROUND

10. Victoria Kelly is an adult, female and currently lives in New Braunfels, Texas. Ms. Kelly was hired at the KandR run Chick-Fil-A as a Team member on October 22, 2018. Ms. Kelly always [performed her job well and had no performance issues.

11. Hannah Baldobino is an adult, female and currently lives in New Braunfels, Texas. Ms. Baldobino was hired at the KandR run Chick-Fil-A in November 2016 as a team member. Ms. Baldobino always performed her job well and had no performance issues.

12. Ms. Baldobino was in a romantic relationship with Sam Bono (“Mr. Bono”), her manager, for a brief time and the pair eventually split. Ms. Baldobino informed Mr. Bono that she no longer wanted to date him. Mr. Bono was upset by the news.

13. On or about November 2019, Ms. Baldobino and Ms. Kelly entered into a relationship, and shortly after the harassment of both of them on the part Mr. Bono began to occur. Ms. Bladobino was on the receiving end of harassment and threats from Mr. Bono. This was occurring on a near daily basis.

14. Ms. Kelly was also on the receiving end of harassment and threats from Mr. Bono. Mr. bono would get very aggressive toward Ms. Kelly, and told her things like she was “messing with the wrong one” and repeatedly called her a “dyke.”

15. Plaintiffs both reported the harassment to Devin Mendez and Tanner Fricke. They are upper management in the company. Plaintiffs were both told that their claims would be investigated and that they were going to get the help they needed.

16. The harassment from Mr. Bono continued to a point that plaintiffs felt unsafe. Plaintiffs continued to report the harassment to upper management. Although Mr. Bono was aware of the complaint, but nothing was done to stop the grossly inappropriate harassment.

17. On or about December 2019, Mr. Bono became so irate that he caused a scene in front of customers at work to the point where the police had to be called. In this regard, Mr. Bono became extremely upset and unhinged jealous fit of rage. Bono was upset that Baldobino had ended the relationship with him, was upset and jealous, that Baldobino and Kelly were dating, and Bono was irate that both Kelly and Baldobino had reported him to management for sexual harassment. On this day Bono was yelling and

screaming at Ms. Kelly and Ms. Baldobino. He screamed hostilities such as: "he had Hannah first" and that "no could be better than him" he and that" their relationship would not work" and that Hannah was a "player" and that both of them were "dykes." Bono and continued yelling vulgarities at both Baldobino and Kelly. At some Point Bono's mother showed up at the restaurant and began yelling at both plaintiffs threatened to "beat Hannah's ass" because "she was now 18" and she could "beat her ass" The police were called. Bono and his mother were interrogated by the police in the parking lot. Mr. Bono was terminated by upper management shortly after this incident.

18. A week following the incident , and in retaliation for reporting the various incidents, for being female and for have a same sex relationship, On or about December 2019, Plaintiffs were both terminated. Ms. Baldobino was told that it was because she could not handle her shifts, even though she had no prior history of in discipline or infractions. Ms. Kelly was terminated for the same stated reason, and also had no prior history of discipline or infractions.

19. Mr. Bono was eventually rehired and currently is still employed at a Chick-Fil-A and managed by KandR.

GAY ANIMUS

History of animus towards Same Sex relationships and Controversial support of anti LGBT organizations.

20. Chic-fil A has a long history as having animus towards same sex marriage and donating to anti LGBT charities . This may affect the culture of those who work and has been pervasive in the American popular culture

21. According to Wikipedia, On June 16, 2012, while on the syndicated radio talk show, *The Ken Coleman Show*, Chick-fil-A president and chief operating officer (COO) Dan Cathy stated:

I think we are inviting God's judgment on our nation when we shake our fist at Him and say, "We know better than you as to what constitutes a marriage". I pray God's mercy on our generation that has such a prideful, arrogant attitude to think that we have the audacity to define what marriage is about.

The following month, on July 2, *Biblical Recorder* published an interview with Dan Cathy, who was asked about opposition to his company's "support of the traditional family." He replied: "Well, guilty as charged. Cathy continued:

22. "We are very much supportive of the family — the biblical definition of the family unit. We are a family-owned business, a family-led business, and we are married to our first wives. We give God thanks for that. ... We want to do anything we possibly can to strengthen families. We are very much committed to that," Cathy emphasized. "We intend to stay the course," he said. "We know that it might not be popular with everyone, but thank the Lord, we live in a country where we can share our values and operate on biblical principles."

23. The day after the Supreme Court of the United States struck down Section 3 of the Defense of Marriage Act, Cathy tweeted, "Sad day for our nation; founding fathers would be ashamed of our gen. to abandon wisdom of the ages re: cornerstone of strong societies." The tweet was subsequently deleted, but was archived by Topsy.

Furthermore, according to Business insider:

Dan T. Cathy was made CEO in 2012, two years before his father passed away. Described by the chain as the CEO of "one of the nation's largest family-owned businesses," Dan T. Cathy works alongside his brother Donald "Bubba" Cathy, who serves as executive vice president of the chicken chain and president of the company's Dwarf House and the Truett's Grill restaurant concepts.

Both Donald and Dan T. Cathy recall growing up in their father's early restaurants, doing odd jobs like scraping gum from underneath tables and spending time in the Hapeville Dwarf House.

Today, Dan T. Cathy spends little time at Chick-fil-A's headquarters, choosing instead to travel around the country visiting different Chick-fil-A locations.

Chick-fil-A's contentious reputation largely stems from donations made by Chick-fil-A to charities that have a reputation for being anti-LGBTQ, as well as comments made by Dan T. Cathy in 2012.

According to a previous article by Business Insider, the Cathy family and Chick-fil-A donated millions of dollars to groups opposing same-sex marriage, from Christian charities to "more extreme" anti-LGBTQ lobbying organizations through the WinShape Foundation.

Some of these organizations included Fellowship of Christian Athletes, an athletic organization that, according to Vox, requires applicants to sign a "sexual purity statement" that condemns LGBTQ relationships, the Marriage & Family Foundation, which has spoken out against marriage equality, and Exodus International, a group that supported the use of gay-conversion therapy.

"In the interview, Cathy stated that he believed in the "biblical definition of the family unit," i.e. that a marriage should be between a man and a woman. Protests ensued nationwide, including a number of "kiss-ins," led by LGBTQ activists, at Chick-fil-A restaurants across the country.

Others came out in support of the chain and Cathy's comments. Following the controversy and subsequent calls for boycotting the brand, former Arkansas Governor Mike Huckabee created a Facebook page encouraging people to participate in "Chick-fil-A Appreciation Day" and buy food from the chain on that day.

Cathy did little to quell criticism of his comments when he later clarified his comments in a radio interview, saying, "As it relates to society in general, I think we are inviting God's judgment on our nation when we shake our fist at him and say, 'We know better than you do as to what constitutes marriage.'"

CAUSES OF ACTION

COUNT I

Discrimination – Gender/ Violation of

Title VII of the Civil Rights Act of 1964 42 U.S.C. § 2000e et seq , as amended

24. Plaintiffs incorporate by reference the facts and allegations set forth above as if the same were fully set forth herein.

25. Defendants, by and through Defendants agents, intentionally engaged in unlawful employment practices involving Plaintiffs because they are female.

26. Defendant, by and through Defendant's agents, discriminated against Plaintiffs because of their sex, sexually harassed Plaintiffs, harassed them for complaining about said illegal activity and terminated them due to their sex, Female, as described above, in violation of their rights., Defendants knew or should have known of the harassment, yet failed to take prompt remedial action.

27. The employment practices of Defendants, , by and through Defendants' agents, specifically Sam Bono, resulted in an adverse treatment as well as had a disparate and adverse impact on Plaintiffs because Plaintiffs are female and /or are in a same sex relationship and /or reported and opposed illegal employment activities. Such employment practices were not job-related and were not consistent with business necessity.

28. Plaintiffs allege that Defendants, by and through Defendants' agents, discriminated and harassed Plaintiffs on the basis of gender and/ or sexual orientation with malice or with reckless indifference to the protected rights of Plaintiffs. Plaintiffs suffer damages for which Plaintiffs herein sue.

COUNT II

Discrimination – Sexual Orientation
Violation of

Title VII of the Civil Rights Act of 1964 42 U.S.C. § 2000e *et seq* , as amended

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29. Plaintiffs incorporate by reference the facts and allegations set forth above as if the same were fully set forth herein.

30. Defendants, by and through Defendants agents, intentionally engaged in unlawful employment practices involving Plaintiffs because they are female.

31. Defendant, by and through Defendant's agents, sexually harassed Plaintiffs, as described above, in violation of their rights., Defendants knew or should have known of the harassment, yet failed to take prompt remedial action.

32. The employment practices of Defendants, , by and through Defendants' agents, specifically Sam Bono, resulted in an adverse treatment as well as had a disparate and adverse impact on Plaintiffs because Plaintiffs are female and /or are in a same sex relationship and /or reported and opposed illegal employment activities.. Such employment practices were not job-related and were not consistent with business necessity.

33. Plaintiffs allege that Defendants, by and through Defendants' agents, discriminated against Plaintiffs on the basis of gender and or sexual orientation with malice or with reckless indifference to the -protected rights of Plaintiffs. Plaintiffs suffered damages for which Plaintiffs herein sue.

COUNT III

Retaliation – **Violation of**

Title VII of the Civil Rights Act of 1964 42 U.S.C. § 2000e et seq , as amended

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34. Plaintiffs incorporate by reference the facts and allegations set forth above as if the same were fully set forth herein.

35. Defendants, by and through Defendants agents, intentionally engaged in unlawful employment practices involving Plaintiffs because of their sexual orientation and or because they are in a same sex relationship.

36. Defendant, by and through Defendant's agents, sexually harassed, and terminated Plaintiffs, as described above, for having reported illegal conduct of sex discrimination, sexual harassment and sexual orientation harassment and reprisals for complaining about such in violation of their rights, Defendants knew or should have known of the harassment, yet failed to take prompt remedial action.

37. The employment practices of Defendants, by and through Defendants' agents, specifically Sam Bono, resulted in an adverse treatment as well as had a disparate and adverse impact on Plaintiffs because Plaintiffs are female and /or are in a same sex relationship and /or reported and opposed illegal employment activities.. Such employment practices were not job-related and were not consistent with business necessity.

38. Plaintiffs allege that Defendants, by and through Defendants' agents, discriminated against Plaintiffs on the basis of gender and or sexual orientation with malice or with reckless indifference to the protected rights of Plaintiffs. Plaintiffs suffered damages for which Plaintiffs herein sue.

COUNT IV

Negligent Hiring, Training and Supervision

39. Plaintiff alleges that the conduct of Defendants constituted negligent hiring, supervision, training and retention. Plaintiff alleges that Defendants did not properly screen, evaluate, investigate, or take any reasonable steps to determine whether the person chosen as Plaintiff's supervisor from Japan was unfit, incompetent, or a danger to third parties. Defendants knew or should have known that the person chosen as Plaintiff's supervisor was unfit and could foresee that this supervisor would come in contact with Plaintiff, creating a risk of danger to Plaintiff. Defendants' failure to exercise reasonable care in the hiring, supervision, training and retention of Plaintiff's supervisor was the proximate cause of damages to Plaintiff for which Plaintiff hereby sues.

ATTORNEY'S FEES

40. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause, as the Court deems equitable and just, as provided by Chapter 38 of the Texas Civil Practice and Remedies Code. and Title VII of the Civil Rights Act, 1981 and Texas Lab Code as cited herein

PUNITIVE DAMAGES

41. Defendants' conduct, as set forth above, was carried out and constituted an entire want of care as to constitute a conscious indifference to the rights and welfare of Plaintiffs. Plaintiffs are hereby entitled to the recovery of exemplary damages to deter such cruel and undignified procedures by Defendants in the future. An award of Punitive Damages is necessitated due to the intentional willfull and malicious nature of the conduct by Defendants and would demonstrate to the Local Community, the Citizens of the State of Texas and to the United States at large that such outrageous conduct will not be tolerated in a civilized society. Accordingly, Plaintiff requests exemplary damages be awarded against Defendant.

JURY DEMAND

42. Plaintiffs demand a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, HANNAH BALDOBINO AND VICTORIA KELLY, Plaintiffs, respectfully pray that Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for Plaintiffs against Defendants for the following:

- A. Defendants take nothing as against Plaintiffs;
- B. Plaintiffs be granted judgment against Defendants for actual and/or economic damages in an amount not to exceed the jurisdictional limits of this Court, representing but not limited to wage payments, past and future, vacation pay, bonuses, overtime, health care benefits, inconvenience, loss of enjoyment of life, other non-pecuniary losses, and all of the compensation due to Plaintiff that accrued at the time of the filing of this Petition, plus interest at the legal rate from the date each payment became due until the date of judgment;

- C. compensatory damages as requested herein above, in an amount within the jurisdictional limits of the Court;
- D. attorney's fees as requested herein above;
- E. Injunctive relief when the court determines that Defendants intentionally engaged in an unlawful employment practices herein, issue an injunction to keep the employer from engaging in said practices again;
- F. pre-judgment and post-judgment interest at the highest legal and/or contractual rate allowed by law;
- G. costs of court; and
- H. such other and further relief, general and/or special, at law and/or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

By: s/s Glenn D. Levy
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